

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Cause No. 1:20-cr-1443-MV

AMADO MARTIN VARGAS HERNANDEZ,

Defendant.

DEFENDANT’S SENTENCING MEMO

Defendant, Mr. Amado Martin Vargas Hernandez, through counsel, The Law Office of Ryan J. Villa, by Richelle Anderson, respectfully submits the following memorandum to aid in the Court’s review of the Rule 11(c)(1)(C) Plea Agreement reached by the parties. For the reasons set forth below, the defense respectfully submits that a sentence of twelve months’ probation and payment of \$250.00 restitution is more than adequate to satisfy the sentencing factors set forth 18 U.S.C. §3553(a). Mr. Vargas Hernandez asks the Court to accept the Plea Agreement and impose the sentence agreed to therein.

INTRODUCTION

This case is before the Court as a result of a Federal Rule of Criminal Procedure 11(c)(1)(C) agreement between Mr. Vargas Hernandez and the government. Pursuant this agreement, Mr. Vargas Hernandez agreed to plead guilty to the unlawful possession of feathers and parts of 11 species of birds protected by the Migratory Bird Treaty Act, in violation of 16 U.S.C. §§ 703 and 707(a), in exchange for an agreed upon sentence of probation and set amount of restitution.

As explained below, this sentence reflects the nature and circumstances of the offense and Mr. Vargas Hernandez’s personal history and characteristics. This sentence is also consistent with the principle that the Court should “consider every convicted person as an individual and every

case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and punishment to ensue.” *Koon v. United States*, 518 U.S. 81, 133 (1996).

BACKGROUND

On June 25, 2020, Mr. Vargas Hernandez was charged by Information with Count 1, unlawful possession without permission the feathers of birds protected by the Bald and Golden Eagle Protection Act, in violation of 16 U.S.C. § 668(a), and Count 2, unlawful possession without permission the feathers and parts of birds protected by the Migratory Bird Treaty Act, in violation of 16 U.S.C. §§ 703 and 707(a). *See* Information [Doc. 1].

Mr. Vargas Hernandez was charged after agents with the U.S. Fish and Wildlife Service Office of Law Enforcement searched the apartment he shared with his wife and two children on November 14, 2019 and discovered various feathers and parts of birds suspected of being protected by federal law. The agents obtained the search warrant for the apartment after allegedly conducting several under cover buys of crested caracara (*caracara cheriway*) feathers with Mr. Vargas Hernandez’s wife after meeting her at the Gathering of Nations Powwow. Mr. Vargas Hernandez was not involved in any way with these alleged under cover buys.

Mr. Vargas Hernandez is a traditional Aztec dancer who grew up performing powwows since he was a small child in Mexico. As a child, he was taught ancestral dances and how to do beadwork and featherwork to make dance regalia. He has carried these traditions into adulthood. While the majority of the featherwork he did used legal bird feathers (*e.g.*, chicken feathers or synthetic feathers) some of feather and parts of birds he illegally possessed were either incorporated into ceremonial or performative regalia or items he intended to incorporate into ceremonial or performative regalia. These factors and combined with Mr. Vargas Hernandez’s

personal background and the nature and circumstances of his offense adequately support the plea agreement reached in this case.

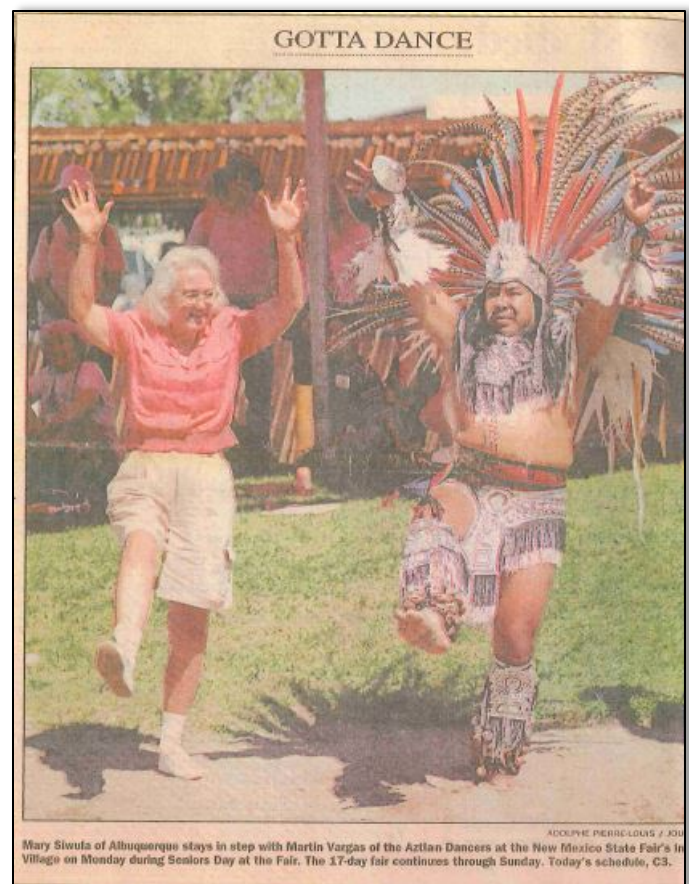
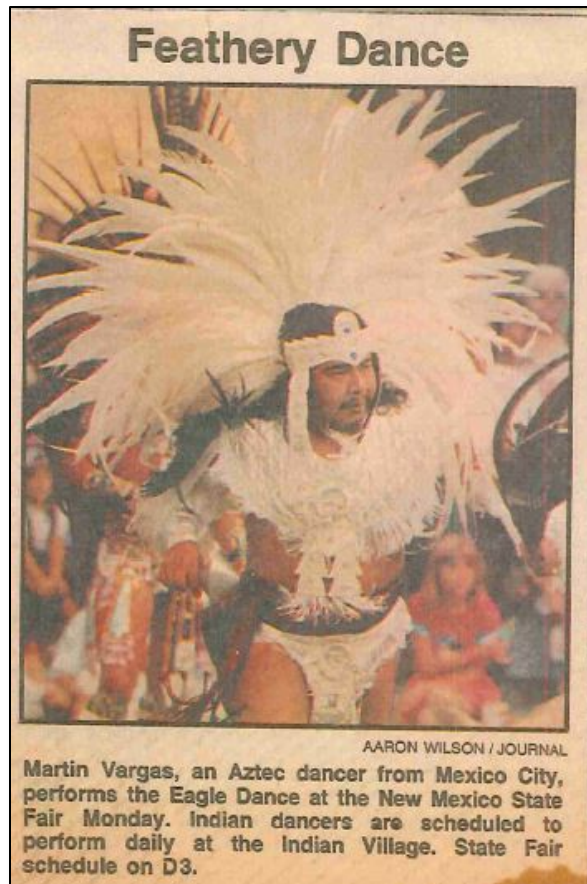
MR. VARGAS HERNANDEZ'S PERSONAL HISTORY AND CHARACTERISTICS
SUPPORT THE AGREED UPON SENTENCE.

Mr. Vargas Hernandez was born in Iztapalapa, a densely populated suburb of Mexico City on September 14, 1963. As discussed above, Mr. Vargas Hernandez was raised with many ancestral traditions and learned dances and how to do beadwork and make dance regalia.



Mr. Vargas Hernandez (left) with is mother (center) and sister (right).

Mr. Vargas Hernandez was a member of the Aztlan Dancers who performed traditional dances throughout Mexico and the United States, and eventually immigrated to the United States to live permanently. He obtained legal permanent residency in 2018. Mr. Vargas Hernandez has lived primarily in Albuquerque, New Mexico and has participated in many events with local pueblos, including at the Pueblo Cultural Center, the Gathering of Nations, and the New Mexico State Fair.



Mr. Vargas Hernandez performing at the New Mexico State Fair

Mr. Vargas Hernandez has no prior criminal history. In addition to dancing and doing beadwork, Mr. Vargas Hernandez has worked a variety of jobs, including in landscaping, construction, hospitality, and most recently as service provider for disabled children. He has been with his wife for over thirty years and together they have two children, a son who is 24 and daughter who is 22. Mr. Vargas Hernandez's son attends college and hopes to pursue a career in healthcare. Mr. Vargas Hernandez's daughter was born with cerebral palsy and has developmental delays. His daughter lives with Mr. Vargas Hernandez and his wife, who work together to ensure she is properly cared for. Mr. Vargas Hernandez is a critical member of his family who has always prioritized his responsibilities as a partner and father. He has lived his life as a law-abiding member of his community and has no history with drug or alcohol use.

**THE NATURE AND CIRCUMSTANCES OF THE OFFENSE SUPPORT THE AGREED
UPON SENTENCE.**

As discussed above, Mr. Vargas Hernandez takes full responsibility for illegally possessing feathers and parts of federally protected bird species. He possessed many of these items either having already incorporated them into performative or ceremonial regalia or intending to do so later for his own or his family's use. Mr. Vargas Hernandez acknowledges, however, that because he is not a member of a federally recognized Indian tribe, his possession of these items was illegal. Although he did not intend to break the law, he recognizes and appreciates the important conservation and ecological purposes of the Migratory Bird Act Treaty and shares in these goals. Mr. Vargas has taken responsibility for illegally possessing protected bird feathers and parts and regrets the decisions he made that led him there.

THE SENTENCING FACTORS SET FORTH IN 18 U.S.C. § 3553

The sentencing factors set forth in §3553(a)(2) support the agreed-to sentence in this case. In addition to the personal characteristics and of the defendant and the nature and circumstances of the offense, § 3553(a)(2) directs the Court to consider the “the need for the sentence imposed (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crime of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” 18 U.S.C. § 3553(a)(2). After considering these, the Court must “impose a sentence sufficient, but not greater than necessary,” to further these goals.

Here, the agreed-to sentence of twelve months' probation and payment of \$250.00 restitution satisfies § 3553(a)(2)'s factors. Specifically, the sentence reflects the seriousness of the offense and affords specific and general deterrence. Mr. Vargas Hernandez acknowledges the

seriousness of his wrongdoing and need for proportionate consequences. He has lived under the stress of a federal prosecution for nearly a year, has taken responsibility for his actions, and is ready to complete his term of probation, pay restitution, and return to taking care of his family and community. The agreed-to sentence accomplishes these goals.

CONCLUSION

For the reasons stated herein counsel for Defendant Mr. Vargas Hernandez respectfully requests this Court accept the Plea Agreement and impose the sentence agreed to therein.

Respectfully submitted,
THE LAW OFFICE OF RYAN J. VILLA

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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to the parties in this matter.

/s/ Richelle Anderson
Richelle Anderson
Counsel for Defendant